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Comments of Michael Fry, Department of Animal Science, University of California,
Davis, CA 95616
November 14, 1998

RE: Pacific Lumber Co. Headwaters Forest Habitat Conservation Plan
and Sustained Yield Plan

Mr. Bruce Halstead
US FWS
1125 16th Street, Room 209
Arcata, CA 95521
FAX: 707-822-8411
RE: Permits PRT-828950 and 1157

Mr. John Munn,
CDF
1416 Ninth Street
Sacramento CA, 95814
FAX: 916-653-8957
RE: SYP 96-002

I am a research biologist at the University of California, Davis, and a former Chair of the Pacific Seabird Group, and a recent Chairman and 6 year member of the US DOI Minerals Management Service Advisory Board Scientific Committee for the Environmental Studies Program. My expertise is in seabird reproduction, avian behavior, and effects of pollution on seabirds and birds of prey.

I am writing to comment on the Environmental Impacts of the proposed Habitat Conservation Plan and Sustained Yield Plan submitted by Pacific Lumber Company for harvesting timber in the Headwaters Forest of Humboldt County, California.

I believe the plans as presented by Pacific Limber will do substantial environmental harm to the old growth forests of the Headwaters Forest, and specifically impact several endangered, threatened, or candidate threatened species inhabiting the area. I believe there is significant documentation of environmental damage already inflicted on this forest ecosystem, and the Plans as submitted will further damage the nesting habitats of Spotted Owls, Marbled Murrelets, and Coho Salmon, plus damage the total home ranges of other amphibians, and invertebrates within the Headwaters Forest boundary.

Pacific Lumber has demonstrated significant disregard for the nesting habitats of Spotted Owls and Marbled Murrelets in the past. This plan will enable the Company to systematically encroach on habitat, until the nesting habitat of murrelets is no longer occupied. If that occurs, the Plan will allow the Company to clear-cut the remaining residual old growth, as it would not fit the definition of "habitat", and would have no legal protection. By giving your assent to an incidental take permit, you will be

knowingly allowing PALCO to subvert the protections of the Endangered Species Act, and systematically destroy a valuable, and irreplaceable, natural resource.

I have specific comments on each of the following topics presented in the proposed plans:

1. Marbled Murrelet Protection
2. Spotted Owl Protection
3. Salmon habitat protection
4. Geological instability
5. Granting of an Incidental Take Permit.
6. Endangered Species Act deficiencies in not protecting unique, irreplaceable ecosystems.

1) Marbled Murrelet Protection

The Habitat Conservation Plan is carefully designed to protect most of the known breeding habitat areas within PALCO land, but clearly exempts some known nesting areas from protection. The best areas will be protected, and California Assembly Bill 1986 (if it will still be valid) assists further in their protection. However, the Plan admits that the habitat for Marbled Murrelets will be degraded over the first 20 years of the Plan, and only after the year 2020 does the Plan estimate that the residual oldgrowth fragmented habitat will be sufficiently filled in so that the birds will accept the residual oldgrowth as suitable nesting habitat. We have no data on the time it takes for restoration of residual forest to become habitat. This plan clearly continues to degrade habitat for 20 years, without clear evidence that the habitat will begin to be adequate after that time. Without sound data on restoration of Marbled Murrelet habitat, this portion of the Plan should not be granted. Once the habitat is destroyed, it cannot be replaced. The estimated time for restoration of the nesting habitat is presented without good supporting data. It is unwarranted to allow the further degradation of nesting habitat without better data. The habitat for Murrelets is already fragmented and degraded, and only a remnant population of birds still exists in California. The species is endangered NOW, and should be protected NOW, not twenty, or fifty, years from now. There is little assurance that enforcement of the Plan will be effective in preventing this Corporation from further degrading the habitat.

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2) Spotted Owl Protection

There are many Spotted Owls within this forest, perhaps 120 sites. The Plan will protect many of these, but it is admitted that not all birds will be protected. The Plan only prevents the cutting of nesting areas during the breeding season, and gives PALCO the opportunity to systematically cut trees in nesting areas during the non-breeding season. Giving PALCO this permission is clearly inappropriate. This corporation has a history of deliberately encroaching on habitat with the intention of forcing birds out of the habitat, so that it is no longer protected. Granting an Incidental Take Permit will only

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exacerbate this problem. Allowing the Corporation to determine where nesting habitats are, then remove them during the non-breeding season is one of the most obvious circumventions of the ESA in this Plan. It should not be permitted.

Furthermore, the habitat fragmentation which will occur with clear-cutting around protected areas will result in creation of habitat for Barred Owls, which have invaded similar managed forest areas, and the Barred Owls will extirpate Spotted Owls from parts of this forest. Thus, while the Plan may state that its intention is to protect Spotted Owls, the secondary loss, due to Barred Owl invasion, will also occur.

This portion of the Plan is clearly deficient, and should be rejected. If PALCO had a track record of attempting to work with the ESA, and assist in preserving habitat, the Plan might be acceptable. However, this Corporation has had so many violations it is clear the Corporation must be regulated in the most strict manner to force it to preserve habitat. This Corporation cannot be trusted to work in the spirit of the ESA in good faith, and this Plan gives PALCO every opportunity to chip away at the little habitat remaining.

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3) Salmon habitat protection

Federal Forest protection guidelines call for riparian protection corridors of 300 feet as a general guideline. This HCP establishes 200 feet, with selective cutting to 30 feet. The riparian corridors are too narrow, and will not protect from siltation of streams, nor will a 30 foot corridor provide adequate shade over streams for optimum salmon habitat. The Plan is better than existing protection, but inadequate to protect these already greatly reduced species. This Plan will at best maintain *status quo*, rather than improve the habitat which is required under a Recovery Plan.

I am not a fisheries expert, but even I can see potential for great abuse under this aspect of the Plan, and PALCO has a track record of violations of riparian areas which portends further environmental harm if the Corporation is granted further license to encroach into riparian areas.

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4) Geological instability

The geology of the California North Coast is highly unstable, with a major earthquake fault within 10 miles of Headwaters Forest. Parts of the forest on PALCO land are growing on very steep slopes, and the soil on these slopes is maintained only by the existing tree roots. Clear-cutting will make many areas of this forest unstable, and highly prone to landslides. Landslides are a major contributor to degradation of stream and water quality. In this Plan, protection of slopes will be the responsibility of a Corporation geologist, without provision for review and oversight by agencies. With the Corporate irresponsibility demonstrated in the past, this Plan should not be implemented without much more stringent controls and oversight power by Agencies. The Trustee Agencies must be granted oversight authority to deny logging in landslide prone areas over the recommendations of the Corporation geologist.

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5) Granting of an Incidental Take Permit for Threatened and Endangered Species.

Enforcement of the Endangered Species Act provisions against take of threatened and endangered species is one of the strongest tools for regulating forestry in this group of old growth stands. The ESA stipulates that persons or corporations convicted of TAKE under the ESA be should be NOT eligible for an Incidental Take Permit. There is very good evidence of violations of the ESA in the forestry practices of PALCO, specifically including logging incidents in the Owl Creek stand, Grizzly Creek, and others. Take of Spotted Owl, Marbled Murrelet, and Coho salmon, by virtue of encroachment into nesting habitat during the breeding season, cutting of nest trees in identified Murrelet occupied habitat, and illegal cutting in riparian corridors, have all been documented. If the CDF had enforced the law, and convictions had been obtained in Humboldt County, PALCO would not be eligible for a permit, and without that permit, PALCO would not be able to log in Marbled Murrelet nesting stands, nor in Spotted Owl territories.

If CDF had aggressively sought convictions regarding hundreds of other documented violations, and/or revoked PALCO's operating permits, the entire area under review would have already been protected.

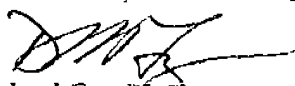
Developing the perfect HCP and SYP will mean nothing without enforcement of current laws. I urge you not to grant an Incidental Take Permit, because your future enforcement options will be very severely curtailed.

How do you expect ANYONE to give this process credibility if you do not enforce the laws already on the books, and then give away those enforcement tools to a corporation which should not even be eligible for a permit.

The revoking of PALCO's Operating Permit for one year on November 9, 1998 should make them ineligible for this permit. Allowing their subcontractors to further cut on their land appears to be a loophole which needs to be closed.

6. Endangered Species Act deficiencies in not protecting unique, irreplaceable ecosystems/habitats

When the ESA was established, conservationists realized that unique ecosystems such as these redwood forests are not directly protected under the Act. These forests are irreplaceable, and now constitute a small portion of former extent. It is most unfortunate that conservationists have had to use the ESA provisions for individual species to attempt to protect this forest resource. This forest ecosystem warrants the same protections as Marbled Murrelets, Spotted Owls, Coho or Chinook Salmon, amphibians and invertebrates, and should be protected in its own right.


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